

Message Text

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DRAFTED BY ACDA/NTB:CVANDOREN

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IO:LCAVANAUGH

L/EUR:CSIEGAL

ERDA:RSLAWSON (SUBS)

C:LFUERTH (S;BS)

S/S-O:RPERITO

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FM SECSTATE WASHDC

TO USMISSION EC BRUSSELS PRIORITY

USMISSION IAEA VIENNA PRIORITY

AMEMBASSY PARIS PRIORITY

AMEMBASSY LONDON PRIORITY

AMEMBASSY BONN PRIORITY

AMEMBASSY ROME PRIORITY

AMEMBASSY THE HAGUE PRIORITY

AMEMBASSY BRUSSELS PRIORITY

AMEMBASSY LUXEMBOURG PRIORITY

AMEMBASSY DUBLIN PRIORITY

AMEMBASSY COPENHAGEN PRIORITY

C O N F I D E N T I A L STATE 285741

E.O. 11652: GDS

TAGS: PARM, TECH, ENRG, USEC

SUBJECT: IMPLEMENTATION OF ARTICLE III OF THE NPT

REF: (A) EC BRUSSELS 11076; (B) ECBRUSSELS 10773;

(C) EC BRUSSELS 10605; (D) EC BRUSSELS 10991;

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(E) EC BRUSSELS 0580

1. DEPARTMENT FULLY SHARES THE CONCERNS SET OUT IN EC BRUSSELS 11076 AND IS CONSIDERING THE NATURE OF THE ACTIONS IT MAY WISH TO TAKE WITH THE COMMUNITY AND ITS MEMBERS. HOWEVER, BEFORE FORMULATING OUR POSITION, WE URGENTLY NEED FURTHER CLARIFICATION OF LEGAL STATUS OF AGREEMENT SIGNED APRIL 1973 (SIC) BETWEEN IAEA AND THE EC AND ITS MEMBER STATES, TO IMPLEMENT ARTICLE III OF THE NPT.

2. ARTICLE 25 OF THE AGREEMENT PROVIDES THAT IT SHALL ENTER INTO FORCE ON "THE DATE UPON WHICH THE AGENCY RECEIVES FROM THE COMMUNITY AND THE STATES WRITTEN NOTIFICATION THAT THEIR OWN REQUIREMENTS FOR ENTRY INTO FORCE HAVE BEEN MET."

3. IT IS OUR UNDERSTANDING THAT THE ALL DOMESTIC LEGAL ACTION NECESSARY TO APPROVE THE AGREEMENT HAS BEEN TAKEN BY ALL THE STATES PARTY TO IT. (E.G., THE AGREEMENT WAS APPROVED IN THE FRG AND ITALY IN THE COURSE OF THEIR PROCEEDINGS FOR NPT RATIFICATION.) WE WOULD, HOWEVER, APPRECIATE CONFIRMATION FROM ADDRESSEES IN EACH OF THE CAPITALS CONCERNED. ASSUMING THIS IS TRUE, SUCH STATES ARE IN A POSITION TO DELIVER THE REQUIRED NOTIFICATIONS (IAEA VIENNA SHOULD ADVISE WHETHER ANY OR ALL OF THEM HAVE DONE SO) AND THE ONLY QUESTION WOULD APPEAR TO BE WHEN THE EC ITSELF WILL BE IN A POSITION TO DO SO.

4. OUR UNDERSTANDING OF STATUS OF THIS QUESTION IN EC (BASED LARGELY ON A DISCUSSION LAST WEEK WITH A. PETTIT OF THE FRENCH FOREIGN OFFICE) IS AS FOLLOWS:

A. THE PRINCIPAL SUBSTANTIVE HURDLE TO EC NOTIFICATION WAS THE ADOPTION OF REVISED SAFEGUARDS REGULATIONS BY THE EC. THIS STEP WAS RECENTLY COMPLETED WHEN THE COUNCIL OF MINISTERS APPROVED THE REVISED REGULATIONS. THE EC THEN NOTIFIED THE IAEA BY LETTER THAT THIS STEP HAD BEEN COMPLETED.

B. BEFORE THESE REGULATIONS CAN BE IMPLEMENTED, WE UNDERSTAND THERE REMAINS A NEED TO TAKE THE LEGAL STEPS NECESSARY TO MAKE THESE REVISED REGULATIONS ENFORCIBLE UNDER THE CONFIDENTIAL

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LAW OF THE EC NON-NUCLEAR-WEAPONS STATES THAT ARE PARTIES TO THE NPT (I.E., THE OBLIGATIONS OF MEMBER STATES WITH RESPECT TO IAEA INSPECTIONS). WE UNDERSTAND FROM PETTIT THAT AN ATTEMPT TO DO THIS THROUGH THE SIMPLIFIED MECHANISM OF ACTION BY THE EUROPEAN PARLIAMENT WAS INITIATED BY THE GERMANS LATE IN JULY, AND A DRAFT RESOLUTION WAS FORWARDED TO THE EUROPEAN PARLIAMENT. (EC BRUSSELS SHOULD CABLE TEXT OF THIS DRAFT WHICH WAS NOT RECEIVED IN POUCH AND REPORT

ON ITS STATUS.)

C. ACCORDING TO PETTIT, THE FRENCH TAKE THE POSITION THAT THIS IS AN ILLEGAL WAY OF SOLVING THE PROBLEM (AND THEY ASSESS THE GERMANS ADMIT ITS DOUBTFUL LEGALITY), AND HAVE MADE IT CLEAR THAT THEY WILL NOT GO ALONG WITH IT. THEY SAY ONLY WAY TO PROCEED IS FOR EACH OF THE GOVERNMENTS CONCERNED TO TAKE THE NECESSARY STEPS IN THEIR OWN CAPITALS. THEY SUPPORT THE USE OF EC CHANNELS TO COORDINATE THESE NATIONAL ACTIONS, AND ENSURE THEIR CONSISTENCY, BUT REPORTEDLY, NOT THE USE OF AN EC REGULATION AS A SUBSTITUTE.

D. OUR EFFORTS TO OBTAIN THE PERSPECTIVE OF OTHER EC MEMBERS IN BILATERAL INQUIRIES IN LONDON LAST WEEK WERE NOT PRODUCTIVE, EXCEPT FOR A VAGUE REFERENCE TO THE FACT THAT

THERE HAD BEEN CONSULTATIONS AMONG MINISTERS FROM THE EC COUNTRIES ON THE QUESTION WITHIN THE PAST TWO WEEKS. (FURTHER INFORMATION ON ANY SUCH MEETING IS REQUESTED.) MR. ANDREOTTI (ITALY) DID NOT SEEM TO BE AWARE OF THE NEED FOR THE ADDITIONAL ACTION DESCRIBED IN "B" ABOVE. THE DUTCH REPRESENTATIVE REFERRED US TO PETTIT AS THE BEST SOURCE OF INFORMATION.

5. IN ADDITION TO THE CLARIFICATIONS REQUESTED ABOVE, WE WOULD APPRECIATE ANY FURTHER LIGHT THAT CAN BE THROWN ON THE SITUATION BY ADDRESSEES, AND MOST ESPECIALLY:

A. WHETHER HOST GOVERNMENTS NOW INTEND TO PROCEED WITH SEPARATE NATIONAL ACTIONS, RATHER THAN PURSUE THE ROUTE OF EC REGULATIONS AND, IF SO, WHAT IS THE SOONEST DATE THIS CAN OCCUR; IF NOT, WHAT IS THE SOONEST DATE THAT ACTION AT EUROPEAN PARLIAMENT MIGHT BE TAKEN, IS UNANIMOUS CONFIDENTIAL

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CONSENT REQUIRED, AND WHAT WAS OUTCOME OF LATEST APPROACH TO FRENCH?

B. WHAT SORT OF NATIONAL ACTION, IF ANY, WOULD BE NEEDED, AND HOW RAPIDLY CAN THIS BE MADE TO OCCUR?

C. IS IT REALLY ESSENTIAL THAT SUCH ACTION BE COMPLETED BEFORE THE EC CAN GIVE THE NOTIFICATION TO IAEA DESCRIBED IN PARA. 2 ABOVE?

D. IF NOT, IS THERE ANY REASON WHY SUCH NOTIFICATION CANNOT BE GIVEN NOW, TOGETHER WITH THE NOTIFICATIONS BY ANY OF THE OTHER PARTIES TO THE AGREEMENT THAT HAVE NOT GIVEN SUCH NOTIFICATIONS?

6. WHILE THE CLEAR FOCUS OF THIS CABLE IS ON BRINGING THE EC-IAEA AGREEMENT INTO FORCE, ON AN URGENT BASIS, WE WOULD ALSO BE INTERESTED IN AN ASSESSMENT FROM VIENNA AND BRUSSELS OF THE PROGRESS BEING MADE IN COMPLETING THE SUBSIDIARY ARRANGEMENTS UNDER SUCH AGREEMENT. IT IS OUR UNDERSTANDING THAT THESE ARE NOT REQUIRED TO BE COMPLETED BEFORE THE ENTRY INTO FORCE OF THE AGREEMENT, BUT THAT ARTICLE 40 OF THE AGREEMENT PROVIDES THAT THE PARTIES "SHALL MAKE EVERY EFFORT TO ACHIEVE THEIR ENTRY INTO FORCE WITHIN NINETY DAYS OF THE ENTRY INTO FORCE OF THE AGREEMENT," AND THAT AN EXTENSION OF THAT PERIOD WOULD REQUIRE AGREEMENT BY ALL THE PARTIES.

7. FOR M/IAEA; PLEASE PROVIDE COMMENTS ON PARA. 3. KISSINGER

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